

Message Text

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TO AMEMBASSY BRASILIA

INFO AMCONSUL RIO DE JANEIRO

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E.O. 11652: N/A

TAGS: EFIN

SUBJ: TAXES ON BANK INTEREST

REF: BRASILIA 7181

IT IS DIFFICULT ON THE BASIS OF INFORMATION SUPPLIED IN THE REFTEL TO COME TO ANY FIRM CONCLUSIONS, BECAUSE THE TECHNICAL DETAILS OF THE DECREE LAW 1411 OF AUGUST 6, 1975 WOULD BE CRUCIAL FACTORS IN ANY DECISION ULTIMATELY RENDERED BY THE INTERNAL REVENUE SERVICE.

ONE QUESTION THAT NEEDS TO BE ANSWERED IS WHETHER THE NEW TAX APPLIES TO INTEREST ON LOANS MADE ONLY BY FOREIGN BANKS WHICH DO NOT HAVE A PLACE OF BUSINESS IN BRAZIL OR
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DOES IT APPLY TO THAT ON LOANS MADE BY ALL FOREIGN BANKS?

ANOTHER IMPORTANT POINT RELATES TO WHETHER THE TAX IS LEGALLY IMPOSED ON THE FOREIGN BANK, WITH THE BORROWER ACTING AS A WITHHOLDING AGENT, OR IS THE TAX IMPOSED ON THE BORROWER?

IT WOULD BE HELPFUL IF THE EMBASSY COULD TRANSMIT A TRANSLATION OF THE DECREE LAW. THE IRS WOULD BE IN A POSITION TO TAKE A MORE DEFINITIVE STAND ON THE QUESTION OF CREDITABILITY.

DISCUSSIONS WITH ATTORNEYS IN TREASURY AND IRS RAISE SERIOUS DOUBTS ABOUT THE CREDITABILITY OF THE 25 PERCENT TAX DESPITE THE "SEPARATE ACCOUNTS" (WHATEVER THAT MEANS) ESTABLISHED BY THE BRAZILIAN AUTHORITIES. SOME TAKE THE VIEW THAT IF THE ULTIMATE TAX BURDEN ON INTEREST IS LESS THAN 25 PERCENT, A CREDIT FOR THE FULL 25 PERCENT CANNOT BE ALLOWED, ASSUMING OTHER ELEMENTS OF THE TAX ARE NOT AN OBSTACLE TO THE CREDIT. OTHERS THINK THE FULL 25 PERCENT WOULD BE CREDITABLE. IN THIS CONNECTION, THE QUESTION HAS BEEN RAISED WHETHER THE RESULT SHOULD BE DIFFERENT WHERE A LOAN AGREEMENT IS FOR A FIXED AMOUNT OF INTEREST (WITHOUT REGARD TO ANY TAX THAT MIGHT BE IMPOSED ON SUCH INTEREST) AS COMPARED WITH A LOAN AGREEMENT WHICH CALLS FOR A FIXED INTEREST RATE PLUS ANY TAX THAT MIGHT BE LEVIED ON THAT INTEREST BY THE BRAZILIAN GOVERNMENT. ONE VIEW IS THAT IN THE FORMER CASE THE FULL 25 PERCENT WITHHOLDING TAX MIGHT BE CREDITABLE WHEREAS IN THE LATTER CASE ONLY THE NET WITHHOLDING TAX WOULD BE CREDITABLE, EVEN THOUGH THE LAW IMPOSING TAX AND THE LAW PROVIDING FOR A REFUND WERE TECHNICALLY SEPARATE. ANOTHER VIEW IS THAT THE CREDIT WOULD BE THE SAME IN BOTH CASES.

REGRET THAT A MORE CONCLUSIVE REPLY IS NOT POSSIBLE AT PRESENT. COPY OF THE DECREE LAW MIGHT ENABLE A MORE DEFINITE REPLY. INGERSOLL

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